

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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ERIC W. PAYNE,

Plaintiff,

v.

Case No.: 10-cv-00679

DISTRICT OF COLUMBIA, et al., (RWR)

Defendants.

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Friday, February 10, 2012

Washington, D.C.

Deposition of

ROBERT ANDARY,

the witness, called for examination by counsel for
the plaintiff, pursuant to notice, held in the
Temple Law Offices, 1229 15th Street, N.W.,
Washington, D.C., beginning at 1:05 p.m.,
before Kelly Susnowitz, a Notary Public in and for
the District of Columbia, when were present on
behalf of the respective parties:

A P P E A R A N C E S

For the Plaintiff:

DONALD M. TEMPLE, ESQUIRE

Temple Law Offices

1229 15th Street, N.W.

Washington, D.C. 20005

202-628-1101

For the Defendants:

KEITH D. PARSONS, ESQUIRE

Office of the Attorney General

441 Fourth Street, N.W.

Sixth Floor

Washington, D.C. 20001

202-727-6247

ALSO PRESENT:

Eric W. Payne, Plaintiff

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C O N T E N T S

Examination by Counsel

Witness	Page
ROBERT ANDARY	
By:	
Mr. Temple	4,160
Mr. Parsons	139,163

E X H I B I T S

(Attached.)

Exhibit No.	Marked
1 Report of Investigation	12
2 Excerpts of Dr. Gandhi's Calendar	12
3 E-mails	12

1 S T I P U L A T I O N S

2 It is hereby stipulated and agreed by and
3 between counsel present at this deposition and by
4 the deponent that the reading and signing of this
5 deposition is not waived.

6 Thereupon

7 ROBERT ANDARY,
8 the witness, called for examination by counsel for
9 the plaintiff, and after having been first duly
10 sworn by the Notary Public, was examined and
11 testified as follows: I do.

12 EXAMINATION BY COUNSEL FOR THE PLAINTIFF

13 BY MR. TEMPLE:

14 Q. Good afternoon, Mr. Andary. I'm Donald
15 Temple, for the record, and, momentarily, Mr.
16 Payne will join us. Would you state your name for
17 the record, please.

18 A. Robert Andary.

19 Q. Spell it, please.

20 A. Last name is A-n-d-a-r-y.

21 Q. I know you're a lawyer, but have you ever

1 been deposed before?

2 A. Yes.

3 Q. And how long ago was that?

4 A. It was when I was working with the Federal
5 Government, so it would have been prior to 2003.

6 Q. Just to refresh your recollection, I'm
7 going to ask you some questions. If you don't
8 understand the question, let me know.

9 A. I will, definitely.

10 Q. Yes or nos for the record. If you need to
11 take a break, let me know. That's pretty much it.
12 Can you state your educational background for me?

13 A. I went to Georgetown University, graduated
14 in 1969. I went to the University of Virginia Law
15 School and graduated in 1974.

16 Q. Are you presently employed?

17 A. No, I'm retired.

18 Q. And you were employed with the Office of
19 Chief Financial Office?

20 A. Yes, among others.

21 Q. When was that?

1 A. That was -- hold on one second. Towards
2 the end of January 2008 until towards the end of
3 October 2009.

4 Q. And prior to that, where did you work?

5 A. Well, I was -- again, I was in the retired
6 status, but my previous job was with the Office of
7 the Inspector General for the District of
8 Columbia. I was Assistant Inspector General for
9 Investigations.

10 Q. How long was that?

11 A. Three years.

12 Q. For what period of time?

13 A. It was 2003 until 2006.

14 Q. So you were retired between '06 and '08?

15 A. Right.

16 Q. And before that?

17 A. Before that, I was the Inspector General
18 at the Government Printing Office.

19 Q. For what period of time?

20 A. Well, I retired in 2003 -- let me go back.
21 It was about -- I'm sorry, it was 1997 that I came

1 there.

2 Q. What was your title when you worked at OCF
3 Office?

4 A. I was the director of the Office of
5 Integrity and Oversight. OIO, for short.

6 Q. I just want to walk through that for a
7 minute. First of all, OIO Office, can you tell me
8 for the record what it did?

9 A. We had responsibility for investigations
10 and for audits internally in the OCFO. We also
11 did background checks for new employees and,
12 eventually, it morphed into doing background
13 checks for all employees, which was ongoing when I
14 left. In addition, we did provide ethics training
15 for everybody in the OCFO and that's essentially
16 it.

17 Q. The investigations that you were speaking
18 about, internal, was there a particular person
19 under you that was in charge of investigations?

20 A. Yeah, Charles Fultz was the director of
21 investigations, under me, and he went by Butch,

1 Butch Fultz.

2 Q. And you had a number of investigators, as
3 well?

4 A. Yes, we had agents. He had eight.

5 Q. And would Mr. Pendleton have worked under
6 Mr. Fultz?

7 A. Yes.

8 Q. Was there an organizational structure to
9 the OIO Office, i.e., an investigative unit, audit
10 unit, that they worked in?

11 A. That's correct. We were basically divided
12 into two parts, the Audit Division and the
13 Internal Security Division.

14 Q. Was there someone in charge of each
15 particular division?

16 A. Yes.

17 Q. And who would have been in charge of the
18 Audit Division?

19 A. An individual by the name of Muhammed
20 Yusuf.

21 Q. And when you say audits, what are you

1 referring to?

2 A. Well, an audit is a review. The
3 difference between an audit and an investigation
4 is that an investigation looks at individuals.
5 You investigate wrongdoing or, you know, crimes by
6 individuals; whereas, an audit, looks at programs
7 and they look at the efficiency of programs. They
8 make recommendations to be more efficient and so
9 forth. So audits are different. Audits are also
10 guided by the yellow book, which are GAO standards
11 for auditors, at least we did our audits according
12 to the yellow book.

13 Q. Now, what was your chain of command, going
14 up?

15 A. Angell Jacobs was the one I reported to
16 directly and then, I guess Lucille Dickerson, too,
17 I would say, even though I didn't deal with her as
18 much as Angell. Angell would do my performance
19 evaluations and so forth, and then Gandhi, above
20 that.

21 (Mr. Payne walked in to the deposition

1 room.)

2 Q. Did you meet with Angell on a regular
3 basis?

4 A. It wasn't regular, but we met a lot.

5 Q. How about Mr. Gandhi?

6 A. Well, we were supposed to meet on a
7 regular basis, but it didn't always work out that
8 way because he was so busy. But, theoretically,
9 we would meet once a month, in a meeting that he
10 would call, one-on-one, and we would discuss what
11 was happening in the agency and I would have
12 breakfast meetings with him when he wanted to. I
13 guess, I went to about three or four of those.

14 Q. When you mentioned ethics training, what
15 did that consist of, for what purposes?

16 A. Basically, it was our code of conduct. We
17 would go over a code of conduct for the OCFO
18 employees. We would give examples of situations
19 and have discussions about how those situations
20 would be approached and so forth. It was
21 mandatory for all employees to do that.

1 Q. The code of conduct, actually, from what I
2 recall, was that code of conduct revised at some
3 point?

4 A. Yes, I was involved in that.

5 Q. Let me finish the questions. As a result
6 of the tax scandal or something like that?

7 A. No. The code of conduct has always been
8 there.

9 Q. I know it's been there, but it was revised
10 as a result of that?

11 A. I'm not sure if that was the reason it was
12 revised. It was revised because of the various
13 issues that would come up in audits and
14 investigations and it would be difficult to
15 clearly cover them in the code of conduct that
16 existed. So we worked hard to make it clearer and
17 to cover more situations and so forth.

18 MR. TEMPLE: Let me just mark this
19 document.

20 MR. PARSONS: At this point, because
21 you're giving him a record that is marked

1 confidential, pursuant to a protective order, that
2 we would mark this section of the deposition as
3 confidential and if you would agree to a
4 continuing agreement to mark every section where
5 you get into the confidential document as
6 confidential, then I won't have to say this every
7 time.

8 MR. TEMPLE: Actually, I won't agree,
9 because I'm marking it doesn't mean that I'm going
10 to have content about -- or discussion at this
11 point about the substance in this document. When
12 we do, then obviously it's protected by court
13 order and that will govern, but these immediate
14 questions are not necessarily pertinent to that.
15 But I do want to mark it.

16 (Deposition Exhibit Nos. 1, 2 and 3 were
17 marked for identification.)

18 BY MR. TEMPLE:

19 Q. Do you recognize Exhibit 1?

20 A. I do recognize Exhibit 1.

21 Q. For the record, what is it?

1 A. It's a report of investigation and it's
2 regarding case 2008-0154.

3 Q. And Exhibit 2, do you recognize that?

4 A. No, I don't. Well, let me look at the
5 whole thing. Exhibit 2 appears to be a calendar.
6 I don't think it's mine.

7 Q. It's not yours. For the record, those are
8 excerpts from Mr. Gandhi's calendar.

9 A. Okay. I do not recognize it.

10 Q. And Exhibit 3, it's a series of e-mails.
11 Why don't you take a moment to look at that.

12 A. I note that the first one is from me; it's
13 very brief. I don't particularly recognize it,
14 but I accept it on face value. The others, I
15 appear to be covered on the second one.

16 Q. These are all, for the record, e-mails to
17 and from you or that you're copied on.

18 A. There are two from me.

19 Q. Two are from you, I believe.

20 A. The second one is from Barbera. The third
21 one is from Laverne Lee. The fourth one is from

1 Dan Keating. Oh, I see, there's a bunch more.

2 Okay. The fifth one is from me.

3 Q. Sir, we don't have to go through it now.

4 A. Yeah, this is the format that we had for
5 our e-mail program and I see a lot of them bear my
6 tag on them where it says Andary Executive
7 Director, et cetera, and I recognize that is
8 something I put on my e-mails. Is that good
9 enough?

10 Q. Sure. What is the difference between OIO
11 and the IG's Office?

12 A. Plenty of differences. The structure is
13 fairly similar. The OIG has jurisdiction over the
14 entire D.C. Government; whereas the OCFO has
15 jurisdiction over the Office of the Chief
16 Financial Offices. It's much more limited. The
17 IG's Office is a creature of statute created by
18 the D.C. council; whereas OIO is created by order
19 of the Chief Financial Officer. It's a separate
20 thing. The Inspector General has limited subpoena
21 power. I do not have that. Their agents are

1 armed and mine are not. Those are some of the
2 differences. The IG is set up with an Audit
3 Division and an Investigations Division. I used
4 to head the Investigations Division there. They
5 also have a division that does reviews, not
6 necessarily audits. I forget what it's called.
7 And there's also a Medicaid Fraud Unit in the
8 Inspector General's Office.

9 Q. Now, to what extent, if any, is there a
10 policy governing the co-investigation of potential
11 alleged impropriety between OIO and IG?

12 A. I don't think there's a written policy,
13 but it's standard among investigators not to
14 conduct dual investigations. Throughout my
15 career, that's been the rule and there's a variety
16 of reasons for that but, if the Inspector General
17 were conducting an investigation of the same
18 matter that I was either investigating or asked to
19 investigate, I would defer to the Inspector
20 General because of their greater powers and their
21 greater jurisdiction.

1 Q. Now, relative to the OIO --

2 A. Can I just add to that?

3 Q. Please.

4 A. Sometimes we did joint investigations,
5 where my agents would work with the Inspector
6 General's agents, if it had to do with an OCFO
7 matter, since our people were more familiar with
8 the structure of the OCFO and the players
9 involved.

10 Q. Now, to the extent that you reported to
11 Angell and to Mr. Gandhi, to what extent was that
12 investigative component of OIO, quote unquote,
13 independent?

14 A. I made the calls as far as how the
15 investigations would go, how they would be
16 conducted. When I say I, I mean the OIO would,
17 within the OIO. One of the important
18 coordinations we would have is that, when I did an
19 investigation and reported on it, it was up to
20 Angell to determine what the administrative
21 sanction, if any, should be, based on what we

1 found in the investigation. We just did the
2 investigation. We didn't do the subsequent
3 administrative action or firing or whatever, that
4 was up to Angell. Does that answer your question?

5 Q. Well, I'm not so sure. Let me probe a
6 little bit more. The review side of OIO, was that
7 equally independent?

8 A. The audit side?

9 Q. Yes.

10 A. Supposedly it was, yes.

11 Q. You say, supposedly, why?

12 A. Well, towards the end, I think, Mr. Gandhi
13 inserted himself into the process. He wanted to
14 tell me how the report should be issued and
15 whether the report should be issued and whether
16 anything should be written down as a result of the
17 audit, and I would not concede to that. What I
18 did say -- the only concession I'd make is that,
19 before we issued the report, I would brief him on
20 the audit's findings so that he would know what
21 they would be, and he was dissatisfied with that

1 and we never did resolve that issue.

2 Q. Let me make sure I understand you. In
3 your experience, reviews, they were independent
4 with other entities that you worked? Let me --
5 strike that question. Should a review, in your
6 professional opinion, be independent?

7 MR. PARSONS: Object to form.

8 Q. I'm sorry, should an audit, which is
9 conducted under the auspices of OIO, should it be
10 independent?

11 MR. PARSONS: Same objection.

12 Q. Noted. You can answer.

13 A. Independent of whom?

14 Q. And should it be, where you have reviewed,
15 independent of the management --

16 MR. PARSONS: Same objection.

17 Q. -- such as Gandhi and Jacobs?

18 A. Shall I answer?

19 Q. You can answer, absolutely.

20 A. Yeah, it should be.

21 Q. Why is that?

1 A. Well, as I mentioned before, we try to
2 follow audit standards and audit standards place a
3 high priority on independence. And it's supposed
4 to be an objective review using audit techniques.

5 Q. And to the extent that you wanted to
6 memorialize an audit in writing, is that in a
7 draft or final audit form?

8 A. Well, the way it works, the first version
9 of the draft report is -- I'm sorry, the first
10 version of an audit report is a draft report.
11 That is shared with the auditee. The auditee is
12 given an opportunity to give comments on their
13 audit and, based on the comments, we would either
14 go back to the audit, if there was some sort of
15 error or objection that we agreed with, and change
16 the audit report to reflect that or we would take
17 the comments and put them in the audit report and
18 issue the final report.

19 Q. Now, going a step further, Mr. Gandhi,
20 you're saying, had a problem with the
21 memorialization of certain information related to

1 audits?

2 MR. PARSONS: Objection to form.

3 A. Yes.

4 Q. What's the nature of the problem?

5 A. He was worried it would get out to the
6 press and make him look bad, I think. I believe
7 that's his problem.

8 Q. Was there a particular audit that came
9 into play that you can think of in your
10 discussions with him on this issue?

11 MR. PARSONS: Object to form.

12 Q. You can answer the question.

13 A. The first time the issue came up, it was
14 as a result of an audit report that we had done.
15 Actually, it wasn't an audit report. It was a
16 management alert and a management alert is
17 something where you see something that's an issue
18 that needs to be resolved by management as soon as
19 possible, so instead of having a full audit, you
20 issue a management alert saying, here's the
21 problem that you need to fix, and I think it was

1 one of those that caused me to have that
2 discussion with Mr. Gandhi.

3 Q. How did it play out?

4 MR. PARSONS: Object to form.

5 Q. You can answer the question.

6 A. We didn't resolve it.

7 Q. What is it that you wanted and what is it
8 that he wanted?

9 A. I wanted to issue my own audit reports.
10 He wanted to tell me what I could write and what I
11 can't.

12 Q. Did that present an ethical problem for
13 you?

14 A. Not ethical so much, but it would violate
15 the yellow book, in my view. The yellow book
16 requires, if you do an audit, you issue a report;
17 and not only that, I tried to foster independence,
18 not complete IG-type independence, but him
19 inserting himself into our process, to me, was an
20 independence issue and I wouldn't do it.

21 Q. Do you know the extent to which -- was

1 that also a problem in the investigation side of
2 the OIO Office, at all?

3 A. The only problem with the Investigation
4 Office, they were very careful not to interfere
5 with my investigations, as far as I know. Their
6 only involvement would be to request an
7 investigation if they got wind of an allegation
8 such as the one from [REDACTED] involving Eric
9 Payne. I could be requested to do an
10 investigation, but the actual process, no, they
11 wouldn't get involved in that.

12 Q. Now, I understand that you left the Office
13 of OIO; is that correct?

14 A. Yeah.

15 Q. Were you asked to leave?

16 A. I was asked for my resignation.

17 Q. Did it have anything to do with your view
18 as to the independence of the OIO Office regarding
19 your reviews?

20 A. Mr. Gandhi would not give me a reason for
21 asking for my resignation beyond saying that he

1 was going to reorganize, that that was his intent,
2 and he never did reorganize as far as OIO was
3 concerned, but he would not tell me. And my --
4 well, my opinion doesn't really matter.

5 Q. What is your opinion?

6 MR. PARSONS: Objection.

7 A. It was my opinion that it was based on the
8 fact that we could not agree or he wasn't
9 satisfied with my independence.

10 Q. Now, back to the code of conduct, the OIO
11 code of conduct, did that have a requirement that
12 OCFO employees would report any suspected
13 wrongdoing or impropriety?

14 A. I believe it did. I can't tell you
15 specifically. It was a published code of conduct.

16 Q. Yes. Did the OIO have any policy or
17 procedure regarding whistle-blowers?

18 A. I believe that was also in the code of
19 conduct, but I can't be sure. But whatever is in
20 there, I would stand by. I believe management was
21 forbidden from retaliating against

1 whistle-blowers. They were protected as far as
2 the allegations they were making but, again, you
3 said, did OIO have a policy, that wouldn't have
4 been our policy. That would have been the OCFO
5 Office's policy.

6 Q. Which would effectively become your
7 policy?

8 A. Right. In fact, if there was a
9 retaliation, I guess we would have investigated
10 it. We would have jurisdiction to investigate.

11 Q. Would there come times when OIO would
12 refer matters to OIG?

13 A. Yes.

14 Q. Was there -- relative to this notion of
15 investigations, was there such things as internal
16 versus external investigations conducted by OIO?

17 A. I'm not clear what you mean by external
18 investigations.

19 Q. Is that term of art written?

20 A. No, it's not a term of art but, as I
21 mentioned before, jurisdiction was internal OCFO

1 employees and we wouldn't get involved with
2 external matters unless it involved an OCFO
3 employee. It would be part of that investigation.

4 Q. Now, we talked about one-on-ones.

5 A. Yes.

6 Q. What is a one-on-one?

7 A. That would be me meeting with Dr. Gandhi
8 and no one else.

9 Q. And how frequently would you say you would
10 meet with him?

11 A. I would say, on average, it was about once
12 every three months, maybe as far as the
13 one-on-ones, but then there were also breakfast
14 meetings that we had.

15 Q. The breakfast meetings are separate and
16 apart from the one-on-ones or were they also
17 one-on-one?

18 A. Well, good question. I'm not positive.
19 He may have seen them as being the one-on-ones; I
20 don't know.

21 Q. Did you also have one-on-ones with Angell

1 Jacobs?

2 A. Not one-on-ones, but we would meet
3 frequently to go over what was going on.

4 Q. What was your working relationship with
5 Angell, can you describe that?

6 A. I think it was very good. We got along
7 very well. She was generally satisfied, I think,
8 with my performance and we didn't have many
9 issues. We had a few, but not many.

10 Q. Would you give her reports regarding your
11 ongoing issues, investigations and audit reviews?

12 A. Most definitely, yes.

13 Q. And what would be the reason for giving
14 her reports?

15 A. Well, because of her responsibility within
16 the agency. We -- technically, I guess, we could
17 have given them to Dr. Gandhi, but giving them to
18 Angell, you know, I would let her decide whether
19 she wanted Dr. Gandhi to see them, whether it was
20 necessary, but I expected that she was acting for
21 Dr. Gandhi.

1 Q. And when I say, are you giving her
2 reports, that would also include updates on
3 investigations?

4 A. Yes. If she wanted an update, normally,
5 she would just call me and say what's going on
6 with such and such investigation.

7 Q. Let me hone in on that for a moment. To
8 the extent that she's getting an update on the
9 investigation, in terms of the process with
10 management as matters are being investigated,
11 would you say, Angell, here's case X. I've
12 started an investigation and then, throughout that
13 process, she's briefed on it as a practice or
14 would you say, Angell, this investigation is
15 started and she gets it when it's completed?

16 MR. PARSONS: Object to form.

17 A. I'm not sure I understand your question,
18 Mr. Temple, I'm sorry.

19 Q. That's fair. You're reporting to Angell
20 as a practice, number one, correct?

21 A. Right.

1 Q. And you're conducting investigations on an
2 ongoing basis?

3 A. Well, my office is.

4 Q. Your office is, okay. But when you report
5 to Angell, do you say, Angell, hypothetically, we
6 have five or six investigations going on. This is
7 the status of each investigation?

8 MR. PARSONS: Object to form.

9 A. No.

10 Q. What type of reports would you give her
11 relative to the updates?

12 A. Well, it's not an update but, once the
13 investigation is completed and we do our report, I
14 would normally send that to her. And as I
15 mentioned earlier, part of the reason was that any
16 action that needed to be taken on an investigation
17 would be taken by her, she would decide.

18 Q. So you don't then give her updates during
19 the investigation?

20 A. Only if she asks for them or sometimes,
21 during an investigation, we would uncover a

1 management issue that needed to be addressed, such
2 as a poor control that allowed someone to steal
3 money or embezzle. And in that case, I would tell
4 her so she would be aware of it. My
5 investigations, towards the end, I was morphing
6 them into a report that would include
7 investigative findings and, in every
8 investigation, I would try to identify a control
9 that led to the misdeed or whatever or the
10 violation.

11 Q. Paul Lundquist, did you work with him as
12 well?

13 A. Yes.

14 Q. In what respect?

15 A. Well, he -- I guess, he was the one that
16 would carry out any administrative action. It was
17 his office that actually did the procedures, doing
18 due process and so forth. I'm trying to think
19 what else. He had me brief his people one time on
20 ethics, I think. I know I spoke to his group, at
21 length, about what we do and various ethical

1 issues and so forth.

2 Paul Lundquist was part of the management
3 team that would meet regularly, once a week, with
4 Dr. Gandhi. We would have it in the conference
5 room. Every manager or every -- or the
6 directorate level would sit down and meet with Dr.
7 Gandhi and we would go around the table and give
8 him highlights of what's going on or on issues
9 that had come up. So I worked with him in that
10 sense.

11 And finally, we had several outside
12 reviews during the period I was there by auditing
13 firms or management firms and, I believe, I worked
14 with Paul Lundquist on responding to those or
15 taking corrective action or recommending. I would
16 interface with him, but that's about it.

17 Q. Relative to Exhibit 1, when this
18 investigation was complete, did you meet with Paul
19 Lundquist and Angell to discuss the investigation?

20 MR. PARSONS: And here, I'm going to
21 repeat my objections of discussion of confidential

1 documents during this deposition as confidential.

2 I believe this is a substantive discussion
3 regarding the document.

4 MR. TEMPLE: Actually, not necessarily.
5 The question was: Did he meet and discuss the
6 documents. There's nothing relative to the
7 substantive content of the document.

8 A. Yes.

9 Q. You did. Okay. And was it regarding a
10 recommendation that you derived from the actual
11 investigation?

12 MR. PARSONS: I'll repeat the same
13 designation.

14 Q. You can answer the question.

15 A. I don't think so. I can't be clear. In
16 fact, the recommendation -- let me look at it
17 again.

18 MR. PARSONS: And I will just note for the
19 record that the witness is looking at the
20 confidential documents and using them to form his
21 answers, so this is one instance of substantive

1 discussion of a confidential document.

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10 Q. I'm going to move into that in a minute.

11 I want to ask you a few preliminary questions,

12 though. Again, back to Paul Lundquist. Did

13 Lundquist ever make -- have any discussions with

14 you about potential contractual impropriety by

15 Michael Teller?

16 A. I believe so.

17 Q. Can you tell me what you recall?

18 A. That's all I recall is that we had a

19 discussion about it. I believe he was raising

20 concerns, but I don't recall exactly. I'm sorry.

21 Q. Did anything come out of that

1 communication by way of an investigation?

2 A. Well, there was an investigation initiated
3 but, whether it was based on something
4 Mr. Lundquist said or something Eric Payne said, I
5 just don't recall.

6 Q. Was there any management alerts issued
7 relative to Michael Teller?

8 A. No, to the best of my recollection.

9 Q. Now, the management alert, again, is a
10 term of art that I just heard today.

11 A. That's an audit.

12 Q. It's a preaudit piece? It's a radar-type
13 issue?

14 A. Not so much. It's usually during the
15 course of an audit. In the course of an audit,
16 you discover something, like somebody that has a
17 control issue that would permit theft or
18 embezzlement.

19 Q. So the management alert is tied into your
20 comment about controls and alleviating control
21 weaknesses?

1 A. Right, or other issues that would come up
2 in the course of an audit.

3 Q. Now, who can make a complaint to OIO?

4 A. Anybody. We even had a hotline.

5 Q. Anybody in the outside, inside?

6 A. Absolutely. For example, if someone knew
7 one of our employees were stealing money, we would
8 welcome that.

9 Q. As a policy matter, would the identity of
10 the complainant be revealed or would it remain
11 confidential?

12 MR. PARSONS: Object to form.

13 A. I think, I don't remember exactly, but I
14 think in our hotline we said that they can be
15 confidential if they wish to, but I believe the
16 choice was left up to the individual or the
17 complainant. In the inspector general community,
18 you automatically give confidentiality because of
19 the statute, but not us.

20 Q. Let me make sure I understand what you're
21 saying. So there's no statutory confidentiality

1 required relative to the complaints in the OIO
2 investigative process?

3 A. As I mentioned before, we're not a
4 creature of statute.

5 Q. So then, as a policy or a procedure,
6 there's no confidentiality necessitated?

7 A. No, it can be necessitated. It would
8 depend on the circumstances.

9 Q. But not as a rule?

10 A. I don't recall, I'm sorry. I'd have to
11 review, you know, what we said on our hotline and
12 so forth. I just don't recall.

13 Q. How about internally, in terms of the OCFO
14 employees who bring complaints within OIO, is
15 there a layer of confidentiality for those
16 complaining employees?

17 MR. PARSONS: Object to form.

18 Q. You can answer the question.

19 A. Again, I would have to say that we would
20 leave that up to the individual whether they
21 wanted confidentiality or not.

1 Q. So if an individual employee doesn't say
2 anything about confidentiality and there's no
3 discussion, then that complainant's identity is
4 not confidential?

5 MR. PARSONS: Object to form.

6 A. Again, it would depend on the
7 circumstances. It's a situation where -- let me
8 put it this way. If a person is a manager talking
9 about something under their responsibility, I
10 think confidentiality wouldn't be a given but, if
11 it's somebody who is a whistle-blower like you
12 say, I think, at a minimum, we would ask them if
13 they want to be confidential because they may not
14 think to ask for confidentiality and, I believe --
15 and I'm not clear on this, but in a majority of
16 situations, they didn't ask for confidentiality.

17 Q. How would you determine, though, if a
18 person was or was not a whistle-blower?

19 A. Well, again it depends on the allegation.
20 Say a coworker is talking about theft by another
21 coworker, I'm not sure that would meet the

1 definition of a whistle-blower. But if they're
2 talking about a policy issue that's wrong or
3 they're talking about their supervisor, then I
4 think it would be a whistle-blower situation. But
5 I'm not sure on that, it depends on your
6 definition of whistle-blower. I don't know if
7 there is such a definition except in statute for
8 people like the Office of Special Counsel.

9 Q. As a practice, when you would have
10 meetings, for example with Angell or Lundquist,
11 Paul, would you memorialize those meetings at all?

12 A. No.

13 Q. And directing your attention to 2008 --
14 you started in January 2008, if I recall?

15 A. Yeah, I think it was the 23rd, because I
16 believe I was there for at least one week in
17 January.

18 Q. Did you have any communication in 2008
19 with Paul Lundquist regarding his concerns about
20 Mr. Payne?

21 MR. PARSONS: Object to form.

1 Q. You can answer that.

2 A. I don't recall. I know that -- well --

3 Q. 2008.

4 A. About Mr. Payne?

5 Q. Yes.

6 A. I don't recall, I should say. I may have,
7 but I don't recall any specific conversation.
8 Perhaps, it's in the e-mail record here. I don't
9 know.

10 Q. Did you have -- do you have any
11 recollection of being in any meetings with Angell
12 or Lundquist where concerns arose about Mr. Payne,
13 in general, in 2008?

14 A. With Angell, yes, definitely, absolutely.

15 Q. And what were those conversations?

16

17

18

19

20

21

Q. Other than [REDACTED]
allegations, were you in any meetings or

1 discussions with Angell where concerns arose about
2 Mr. Payne's performance in 2008?

3 A. I'd have to say no. As I mentioned
4 before -- although I hadn't mentioned this, there
5 had been a previous investigation of Mr. Payne's
6 management style, but that was before I came. So
7 that's the only thing I know about.

8 Q. You didn't have any -- did you have any
9 communications with Mr. Lundquist in 2008 about
10 Mr. Payne's performance?

11 A. Again, I don't think so, but I'd have to
12 say, I don't recall any.

13 Q. How about Mr. Gandhi?

14 A. No.

15 Q. You know Mr. Payne, right?

16 A. Yes. Let me go back to Gandhi. Again,
17 you're talking about his performance?

18 Q. Yes, sir.

19 A. I'd have to say no, but I don't recall
20 everything I said to Dr. Gandhi, but I don't know
21 why Eric's performance would have come up between

1 us.

2 Q. I was asking you, you said you know
3 Mr. Payne?

4 A. Yes, I do.

5 Q. Did you have occasion to work with him?

6 A. Not work with him, but meet with him,
7 yeah.

8 Q. About what types of issues?

9 A. Several. When he was working on the
10 lottery contract, he asked us to use our contract
11 with an investigative company called USIS, United
12 States Investigative Service, I believe was the
13 name of it, and do a due diligence on the bidders
14 for his lottery contract or the -- it may have
15 been the winners. I think it was the bidders and
16 we did that because we have an ongoing
17 relationship with that company. We used them for
18 background investigations, but they also did due
19 diligence. Here, I'm talking so much, I lost
20 track of your question.

21 Q. I asked did you ever work with him and you

1 said that you met with him and not worked with
2 him. I look at it as synonymous based on what you
3 just said.

4 A. Well, yeah; as far as things within his
5 jurisdiction, no. That's about the only time that
6 I got involved with him and, once we got the due
7 diligence reports, I sat down with him and I
8 believe it was the General Counsel of the lottery
9 board and we went over them. And then we got
10 involved in an attempt to get Eric to pay for
11 them. I don't remember how that was resolved, but
12 it was always our understanding that he was going
13 to take it out of his budget because it was, kind
14 of, expensive.

15 Q. You had subsequent interaction with Eric
16 relative to two investigations, correct me if I'm
17 wrong, is that right, the [REDACTED]
18 investigation and David Tseng's investigation?

19 MR. PARSONS: Object to form.

20 Q. Strike the question. Were you involved
21 with an investigation involving [REDACTED]

1 [REDACTED] that related to Eric Payne?

2 A. Yes.

3 Q. Were you involved in a subsequent
4 investigation involving David Tseng and Eric
5 Payne?

6 A. It's possible you're referring to the
7 issue of contracting with law firms?

8 Q. Correct.

9 A. I remember we got the complaints and I
10 think we did some preliminary work in just
11 interviewing people, like Barbera, but in the end,
12 and, I believe, this is my recollection, that I
13 came to the conclusion that this was just a policy
14 issue between two components of the OCFO and
15 there's nothing wrong with it, it's just the two
16 of them couldn't agree on who should handle these
17 contracts and I thought it was a management issue
18 that should be resolved by the CFO, by Angell.

19 Q. I'm going to come back to that. Do you
20 have any reason, in your dealings with Mr. Payne,
21 to question his integrity?

1 A. No.

2 Q. Honesty?

3 A. Well, I'll tell you, the investigation
4 that I conducted certainly indicated that he was
5 telling the truth.

6 MR. TEMPLE: I want to take a five-minute
7 break.

8 (Brief recess.)

9 BY MR. TEMPLE:

10 [REDACTED]
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[REDACTED]

[REDACTED]

[REDACTED]

17 MR. PARSONS: I'm going to -- once again,
18 the witness is referring to the confidential
19 documents, to the extent that he references them,
20 the portion in which he does, should be designated
21 as confidential in the protective order.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

11 MR. PARSONS: Note, for the record, the
12 witness again is reviewing the confidential
13 document --

14 MR. TEMPLE: All of this is stipulated to
15 confidentiality as part of this deposition.

16 MR. PARSONS: We have a continuing
17 agreement?

18 MR. TEMPLE: Yes.

[REDACTED]

[REDACTED]

[REDACTED]

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Row	Bar Length (approx. % of total width)
1	95
2	90
3	75
4	85
5	35
6	95
7	40
8	98
9	100
10	50
11	20
12	88
13	95
14	58
15	92
16	92
17	42
18	48
19	68
20	72

[illegible]

[illegible]

Row	Bar Length (approx. % of total width)
1	85
2	25
3	85
4	35
5	45
6	35
7	75
8	50
9	90
10	70
11	70
12	98
13	100
14	98
15	98
16	92
17	88
18	88
19	95
20	60
21	78

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A horizontal bar chart with 20 rows. Each row consists of a small vertical bar on the left and a longer horizontal bar to its right. The vertical bars are all the same height and are positioned at the same horizontal distance from the left edge. The horizontal bars vary in length, representing different percentages. The bars are solid black.

Category	Percentage
1	100%
2	100%
3	100%
4	100%
5	100%
6	100%
7	100%
8	100%
9	100%
10	100%
11	100%
12	100%
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18	100%
19	100%
20	100%

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11 Q. Let me go back to Mike Teller. And you
12 know Michael Teller?

13 A. Yes.

14 Q. Are you aware of a complaint by Mr. Payne
15 to OIO about Michael Teller?

16 A. Yes.

17 Q. Prior to his complaint, did you know
18 anything about Mike Teller's prior employment
19 history before he came to OCFO?

20 A. I don't think I did. I probably knew
21 where he came from, but I can't recall now what

1 that was.

2 Q. You have no personal knowledge about any
3 prior questions about his contract practices?

4 A. I may have become aware of them later on,
5 yeah, but I don't remember that I did, but it
6 sounds familiar. But initially, I didn't know
7 anything about it.

8 Q. So Mr. Payne filed a complaint in OIO
9 about Michael Teller?

10 A. Yeah, if you -- I don't think filed is the
11 correct --

12 Q. Complained.

13 A. Yeah, he complained.

14 Q. Well, filed --

15 A. I'm sorry, I'm just being too technical.

16 Q. I just want to make sure, when we say
17 filed, it means verbal --

18 A. I think it was oral.

19 Q. Who did he complain to?

20 A. To me, I think.

21 Q. Would that have been about May 15th?

1 A. I don't remember.

2 Q. You did meet with him on the morning of
3 May 15th; is that right?

4 A. That could have been something we
5 discussed, unless it had something to do with
6 USIS, but that sounds about right.

7 MR. TEMPLE: We're going to take a break.

8 (Brief recess.)

9 BY MR. TEMPLE:

10 Q. Let me go back over a few things just for
11 clarification. You did have a meeting with Mr.
12 Gandhi on May 15, 2008?

13 A. Is that according to his calendar?

14 Q. Yes.

15 A. May 15th?

16 Q. If you go to the May 15th calendar --

17 A. Yeah, I see it.

18 MR. PARSONS: Object to form.

19 Q. Let me bring your attention to --

20 A. Oh, a breakfast meeting.

21 Q. Yes. And this is Exhibit --

1 A. What's that, \$25?

2 Q. It's probably a tip. This is Exhibit 2
3 and I just want you to reference that it's
4 EWP-10985. So I just wanted to confirm that there
5 was a meeting between you and Gandhi on May 15th,
6 a breakfast meeting?

7 A. Well, a lot of times, even though it's in
8 his calendar, at the last minute, he'll postpone
9 it, like if he has to meet with a councilmember
10 or something like that, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

18 MR. PARSONS: Just let me interject real
19 quick. These documents are also subject to a
20 protective order, so if we all can agree that this
21 line of questioning will also be confidential?

1 MR. TEMPLE: By law, it's confidential.

2 MR. PARSONS: I'm just clarifying for the
3 record.

4 MR. TEMPLE: Yes.

5 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13 Q. So in this meeting of the 15th of May,
14 what were you and Gandhi discussing?

15 A. I just can't tell you. I don't know. We
16 would be discussing matters of current issues, I
17 guess.

18 Q. Do you know if the issue of any OIO
19 investigations was discussed at that meeting?

20 A. Mostly, we would talk about audit issues,
21 because we're in a public area and I think, you

1 know, if we talked about investigations, it would
2 be obliquely, but I just don't recall. I couldn't
3 tell you exactly what we discussed.

Row	Bar Length (approx. % of total width)
1	85
2	55
3	90
4	95
5	98
6	96
7	88
8	92
9	75
10	93
11	100
12	70
13	65
14	75
15	88
16	91
17	94
18	96

[illegible]

Q. I want to go back to something regarding

1 Mr. Teller.

2 A. Yes.

3 Q. Does Mr. Payne report to your office
4 concerns about Mr. Teller in April 2008?

5 A. I don't remember the exact date, but he
6 did report an allegation -- made allegations.

7 Q. Tell me how that was received and
8 processed?

9 MR. PARSONS: Object to form.

10 A. I believe it was him, Eric, coming over to
11 my office and talking with me, but I can't
12 remember exactly.

13 Q. And once he would have relayed that
14 information to you, what would you have done?

15 MR. PARSONS: Object to form.

16 A. I would have discussed it with my director
17 of investigations and decided whether or not to
18 initiate an investigation.

19 Q. And in that particular situation, that
20 would have been assigned to? Who was that person
21 at that time?

1 MR. PARSONS: Object to form.

2 A. To what?

3 Q. The person that you discussed it with.

4 A. Again, I'm just telling you my regular
5 practice. I don't remember exactly what happened
6 in this case, but I would have talked to Butch
7 Fultz about it and we would have tossed, back and
8 forth, ideas and I would make a decision whether
9 to open an investigation.

10 Q. Ultimately, it was assigned to
11 Mr. Pendleton?

12 A. That's my recollection.

13 Q. Do you know if Pendleton conducted an
14 investigation of Mr. Payne's complaints?

15 A. Well, as I mentioned to you, I think I
16 mentioned previously, one of the first things you
17 do in an investigation is to debrief the
18 complainant and it's my belief that Pendleton
19 tried to contact Eric Payne and I know he had a
20 little bit of trouble connecting with Eric Payne
21 and, whether he did eventually meet or not, I

1 don't remember. But you know, you probably have
2 better information than me on that.

3 MR. PARSONS: I apologize. May I take a
4 break and make a quick phone call?

5 MR. TEMPLE: Sure.

6 (Brief recess.)

7 BY MR. TEMPLE:

8 Q. Directing your attention to Exhibit 1 and
9 I note in this document, that we have been
10 provided, that there is a report of investigation
11 which is Bated 2041 through 2044 and this document
12 says: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Row	Bar Length (approx. % of total width)
1	100
2	60
3	95
4	55
5	95
6	90
7	20
8	85
9	100
10	80
11	90
12	20
13	25
14	95
15	25
16	30
17	95
18	30
19	85
20	95

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Row	Bar Length (approx. % of total width)
1	75
2	70
3	25
4	65
5	25
6	55
7	65
8	80
9	55
10	95
11	15
12	85
13	95
14	100
15	90
16	95
17	95
18	100
19	95
20	90

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A horizontal bar chart with 20 rows. Each row consists of a small black square on the left and a black bar of varying length extending to the right. The bars are of different lengths, with some being very long and others very short, creating a jagged, abstract pattern.

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Row	Bar Length (approx. % of total width)
1	40
2	95
3	45
4	60
5	35
6	30
7	98
8	95
9	100
10	98
11	95
12	90
13	70
14	75
15	65
16	25
17	92
18	20
19	100
20	80
21	30

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[REDACTED]

[REDACTED]

11 Q. David Tseng made a complaint to OIO about
12 Eric Payne relative to certain legal contracts,
13 are you aware of that?

14 MR. PARSONS: Object to form.

15 A. I'm aware of the complaints. My
16 recollection is that they came from Charlie
17 Barbera, not from David Tseng. I can't say for
18 sure.

19 Q. But it didn't come from Barbera at the
20 insistence of Tseng?

21 A. Well, Barbera was a funny guy. I don't

1 think he would have hesitated to tell me directly.

2 Q. Did he -- what did Barbera complain about?

3 A. Now that you mention it, I'm wondering
4 whether it came from Eric Payne or Joe Giddis
5 instead of Barbera, because that would have been
6 more logical because Payne was complaining that
7 the General Counsel had taken away some of the
8 contracts that should have been rightfully his.
9 Now I'm thinking it was Joe Giddis that was in
10 place at that time, but it may have been Eric.

11 Q. Actually, Payne was in place, Payne was
12 the contracting officer at that time.

13 A. He was, but he hadn't been informally
14 demoted at that time?

15 MR. PARSONS: Object to form.

16 Q. No, he had not been demoted at that time.

17 A. Now, on the other hand, it could have been
18 Barbera complaining that Payne was trying to go
19 over their heads with the contracts, themselves,
20 when General Counsel felt that they were
21 responsible.

1 MR. PARSONS: I'd just like to, for my own
2 sanity, I would appreciate if we would go back to
3 the question and answer format.

4 MR. TEMPLE: I don't think I understand.
5 Is that an objection?

6 MR. PARSONS: I just feel like we're being
7 a little too conversational. I prefer that we go
8 back to the question and answer format.

9 THE WITNESS: I just volunteered that.

10 MR. PARSONS: So that I would have the
11 opportunity to object, if necessary.

12 THE WITNESS: Okay.

13 BY MR. TEMPLE:

14 Q. Were you aware that Mr. Payne raised an
15 issue about this OGC contracting issue in
16 conversations with Investigator Pendleton?

17 MR. PARSONS: Object to form.

18 Q. Prior to Mr. Tseng actually making the
19 complaint to OIO?

20 MR. PARSONS: Object to form.

21 A. I don't recall that, but whatever

1 Pendleton says, his recollection is probably more
2 accurate than mine.

3 Q. Now, the issue that Mr. Barbera complained
4 to you about, do you recall that?

5 A. Well, again, you're assuming it was
6 Barbera.

7 Q. You told me it was Barbera.

8 A. I said it could have been.

9 Q. So what was the issue?

10 A. The issue was that General Counsel was
11 getting contracts for legal work directly through
12 General Counsel and not through the contracting
13 officer and that led to tension between the two
14 offices and whether it was Payne complaining about
15 the General Counsel doing it or whether it was the
16 General Counsel complaining that Payne was trying
17 to run that, I don't recall, but that was the gist
18 of the complaint.

19 Q. I just want to visit that for a short
20 period of time. To the extent that it was a
21 contract issue, was it a policy in OCFO that says

1 that contractual procurement issues should be
2 determined by the contracting officer versus the
3 General Counsel?

4 MR. PARSONS: Object to form.

5 Q. You can answer the question.

6 A. My recollection is that there was an order
7 from the Chief Financial Officer delegating the
8 authority to do these legal contracts through the
9 General Counsel and, therefore, they seemed to be
10 in their right to be doing it but, generally, the
11 policy was that the contracting officer handled
12 it.

13 Q. To that extent, in a situation like that,
14 to the extent that there are potential ethical
15 overtones in terms of conflicts of interest, would
16 that be something within the purview of OIO?

17 MR. PARSONS: Object to form and
18 speculation.

19 Q. You can answer the question.

20 A. If there was a violation of our standard
21 of conduct, yeah, it would be, but I don't see the

1 ethical issue unless we're talking legal ethics,
2 like, about the code of official responsibility or
3 something like that. I didn't see anything wrong
4 on either way. I thought it was a jurisdictional
5 dispute that had to be handled by management.

6 They had to decide who's going to do what and, in
7 my view, if the contracting officer wanted to do
8 it, he should have made his case to the CFO, and
9 it appeared that the General Counsel had already
10 done that and gotten an order from them. That's
11 my recollection.

12 Q. Now, when an issue comes to your office
13 and reaches a point of a formal complaint --

14 A. Yes.

15 Q. -- reaches that stage, do you have a
16 communication with Angell or Mr. Gandhi to say
17 this should not be a complaint, it should be a
18 policy issue and it should be resolved
19 accordingly?

20 MR. PARSONS: Object to form.

21 A. Well, you can complain about anything. I

1 wouldn't have objected to the fact that there was
2 a complaint. I would have objected to having an
3 investigation of the matter.

4 Q. Did you have a discussion with Angell to
5 that effect?

6 MR. PARSONS: Object to form.

7 A. I don't recall one and I'm not even sure
8 she was aware of it.

9 Q. Well, shouldn't she have been made aware
10 of something that has a policy overtone that
11 resinated an investigative overtone?

12 A. Not necessarily. If it was a matter of
13 little importance to me, i may not have raised it
14 with her. On the other hand, I might have. I
15 just don't recall, I'm sorry.

16 Q. Did you think it was a matter of little
17 importance?

18 A. Eventually, yes. I may have even stopped
19 the investigation. I'm not sure. But, to me,
20 after getting, I guess, like a preliminary
21 investigation and finding out about the OCFO order

1 or the CFO order, it seemed like a management
2 issue, not an issue for me. I mean, I don't go
3 around deciding who's got jurisdiction over what.
4 That's not my function; that's the function of
5 management.

6 Q. Did you actually have communication with
7 Charlie Barbera?

8 A. I think I talked to him about it. I was
9 thinking, originally, that that's where the
10 complaint came from, but then I was thinking that
11 maybe it was from Eric Payne. I don't know, but I
12 do remember having some sort of conversation with
13 Barbera.

14 Q. Did you know that on or around July 2nd,
15 2008 that Mr. Payne was removed from his position?

16 A. I found out --

17 MR. PARSONS: Object to form.

18 A. I found out afterwards.

19 Q. And when did you find out?

20 A. I don't remember.

21 Q. Do you know how you found out?

1 A. Either Angell told me or I heard it from
2 one of the staff that had heard it and I think the
3 latter is probably the most likely.

Row	Bar Length (approx. % of total width)
1	95
2	85
3	90
4	35
5	55
6	90
7	95
8	85
9	15
10	100
11	95
12	100
13	90
14	25
15	95
16	90
17	100
18	95

13 Q. Traci Fuller, is that your --

14 A. Yes, thank you, that was my administrative
15 assistant the entire time I was there.

16 Q. Did Traci Fuller have access to your
17 files?

18 MR. PARSONS: Object to form.

19 A. I believe she did because, if I was on the
20 road or I was in a meeting and I needed something,
21 I would ask her to find it for me and tell me what

1 | it was, especially my e-mails.

2 Q. I just have a few final questions before
3 counsel asks you questions. I'm directing your
4 attention to 2126 and 27.

Row	Bar Length (approx. % of total width)
1	65
2	80
3	95
4	90
5	20
6	98
7	60
8	100
9	10
10	95
11	65
12	95
13	10
14	85
15	100
16	98
17	95

[illegible]

[illegible]

2 Q. Let me direct your attention to the
3 e-mails.

4 MR. PARSONS: Are you going to Exhibit 3,
5 Counsel?

6 Q. Exhibit 3. You'll see e-mails there dated
7 May 21st. There is a series of e-mails on this
8 particular page, but I want to concentrate on the
9 e-mail from Eric Payne to you, dated Wednesday,
10 May 21st, 2008 at nine o'clock.

11 MR. PARSONS: Counsel, can you direct me
12 to the page?

13 THE WITNESS: It's this one. I see it.

14 BY MR. TEMPLE:

15 Q. Payne writes to you, cc'd to Lundquist,
16 and he says, "I'd like to discuss the
17 investigation of Mike Teller and the IT contracts,
18 which I requested and initiated over a month ago,
19 when you have an opportunity." And you respond on
20 the same day.

21 A. Is that the one above it?

1 Q. May 21st, 2008 at 9:33, copied to
2 Mr. Fultz. "Eric, we'd be happy to discuss this
3 matter with you. I've turned it over to Butch
4 Fultz to handle. Please call him. He's expecting
5 your call." What happened to that investigation
6 after that point; do you know?

7 MR. PARSONS: Object to form.

8 A. It wasn't seen through to a conclusion is
9 my recollection.

10 Q. Do you know why that is?

11 A. I believe it's because we found out that
12 IG was conducting a similar investigation and we
13 would defer to the IG on that but, again, that's
14 my belief, but I'm not positive on that.

15 MR. TEMPLE: Just give us a few minutes.

16 (Brief recess.)

17 MR. TEMPLE: Just a couple of questions.

18 BY MR. TEMPLE:

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

2 Q. Number two, did you -- are there
3 circumstances where you actually refer matters to
4 the Department of Justice for investigative
5 reasons?

6 A. Not to the Department of Justice, no.

7 Q. Other than IG, where would you refer a
8 matter to if you thought it was criminal in
9 nature?

10 A. If something was clearly criminal, I would
11 probably coordinate with the IG on referring it to
12 the U.S. Attorney's Office. I have directly gone
13 to the U.S. Attorney's Office and reported
14 allegations, but only after notifying the IG's
15 Office.

16 Q. So you didn't take the IG's lead?

17 A. No. I tell them I got this and I think it
18 should go to the Assistant U.S. Attorney, but I
19 guess I would be following their lead. If they
20 said no, I would discuss it with them. But I know
21 we had some cases where we did an investigation

2 | could take it right to the grand jury.

Category	Value (approximate percentage)
1	95
2	100
3	35
4	25
5	98
6	75
7	70
8	25
9	25
10	60
11	75
12	45
13	85
14	70
15	80
16	95
17	100
18	45

[illegible]

[illegible]

[REDACTED]

5 MR. TEMPLE: Sir, it's your turn.

6 MR. PARSONS: It's my turn. All right.

7 EXAMINATION BY COUNSEL FOR THE DEFENDANTS

8 BY MR. PARSONS:

[REDACTED]

[REDACTED]

2 Q. That's all I was wondering on that. Could
3 you go to Exhibit 2, please?

4 A. Yes.

5 Q. You testified earlier regarding a meeting
6 with Gandhi on May 15, 2008. Do you have any
7 specific recollection, other than what was shown
8 to you in Exhibit 2 today, of such a meeting?

9 A. Hold on while I take a look at it. That
10 was a breakfast meeting. I do recall that I met
11 with him several times for breakfast, but I
12 couldn't tell you what happened at this particular
13 one or whether we even had it. Because sometimes
14 it would be scheduled and I would get a call at
15 the last minute saying that it would need to be
16 rescheduled, but I did have meetings with him at
17 the Old Ebbitt, yes.

18 Q. But you have no specific recollection
19 whether you met with him on May 15, 2008?

20 A. No, but I wouldn't deny it.

21 Q. You testified earlier that -- or

1 Mr. Temple asked you earlier whether Mr. Payne
2 complained to you about Mike Teller on May 15th,
3 2008, you said that sounds about right. Do you
4 have any specific recollection of Mr. Payne
5 complaining to you on May 15, 2008 about
6 Mr. Teller?



7 A. No.

8 Q. And similarly, looking at May 8th, 2008,
9 the meeting that you testified was only about
10 chartered schools, do you have any specific
11 recollection of whether that meeting occurred?

12 A. Yes, I do. I can't vouch for the date,
13 but I know that we did have a breakfast meeting
14 with Tom Nida, the three of us.

15 Q. If you can turn to Exhibit 1 again. This
16 is the report. Would it be fair to say that you
17 referred to Exhibit 1 throughout this deposition
18 for your answers?

19 A. Yes, right. From time to time, we've
20 discussed various things in there.



[illegible]

[illegible]

A horizontal bar chart illustrating the percentage of respondents, categorized by age group, who believe climate change is a serious problem. The y-axis lists age groups from youngest at the top to oldest at the bottom. The x-axis represents the percentage, ranging from 0% to 100%. Each bar's length corresponds to the percentage of respondents in that age group who consider climate change a serious issue.

Age Group	Percentage (%)
<18	~65%
18-29	~95%
30-39	~30%
40-49	~60%
50-59	~90%
60-69	~25%
70-79	~75%
80-89	~85%
90+	~60%
Total	~65%
<18	~85%
18-29	~95%
30-39	~85%
40-49	~75%
50-59	~85%
60-69	~75%
70-79	~65%
80-89	~55%
90+	~45%
Total	~75%
<18	~95%
18-29	~95%
30-39	~95%
40-49	~95%
50-59	~95%
60-69	~95%
70-79	~95%
80-89	~95%
90+	~95%
Total	~95%

[REDACTED]

10 Q. You testified that when someone came to
11 OIO with a complaint that they could be
12 confidential if they wanted to be; is that
13 accurate?

14 A. Yes, but confidentiality is a liquid term
15 because, if we were ordered by a court to divulge
16 a name or something like that, we may have to do
17 it. But to the extent that we would be able to
18 keep the name confidential, yeah, we would.

19 Q. And did you also testify that even when
20 someone asked to be confidential, you sometimes
21 disclosed that information to management if there

1 was an issue you thought they needed to be aware
2 of?

3 A. Sure, you can do that without disclosing
4 the identity of the complainant.

5 Q. Do you ever recall Eric Payne asking you
6 to remain confidential in any of your
7 conversations with him?

8 A. No.

[REDACTED]

13 Q. We talked about a complaint against Eric
14 Payne that you concluded was a turf war, do you
15 recall that?

16 A. Yes.

17 Q. Was it your testimony that that complaint
18 did not come from David Tseng directly?

19 A. My recollection -- well, I think the
20 e-mail showed that it came from Eric Payne, but my
21 recollection was that it was Barbera that

1 initially raised it with me in a phone
2 conversation, but now I'm not so sure. If Payne
3 says he's the one that brought it to my attention,
4 then I would go with that.

5 Q. You testified earlier to Mr. Temple that
6 you did not think the investigation started by
7 Mr. Payne involving Mike Teller was concluded; is
8 that correct?

9 A. That's my belief, yes.

10 Q. And that was as of the time you left your
11 position with the OCFO?

12 A. Correct.

13 Q. And what date was that again?

14 A. It was in October, and it was towards the
15 middle of October.

16 Q. Of?

17 A. Of 2009. I don't remember the exact date,
18 but it would be a matter of record.

19 Q. Was it the practice of OIO, during your
20 time there, to draft a concluding memorandum
21 whenever an investigation of that sort was

1 concluded?

2 A. We had two different ways of doing it. If
3 it was something where we established a violation
4 of something, where an administrative action or
5 some sort of action was required, we would do a
6 Report of Investigation and send it to the front
7 office, or if it was something they just should be
8 aware of, I would do that. But we also had a
9 practice, if the complaint was not verified or
10 substantiated, we could disclose it internally.
11 We had a name for it. I forget, but we would do a
12 memorandum that so and so made a complaint and it
13 was not substantiated and, therefore, the file was
14 closed and those we would not send forward,
15 necessarily. Because we had so many
16 investigations, we couldn't be sending every one
17 when they weren't substantiated.

18 Q. And you would never write one of these
19 case-closing memoranda if the investigation were
20 not closed; is that correct?

21 A. Correct. But let me add, an investigation

1 is always subject to being reopened and I might
2 prepare a Report of Investigation and, later, more
3 information comes to my attention and then I
4 reopen it.

5 Q. But if there were a case-closing
6 memorandum for this Mike Teller investigation,
7 would it be your testimony that according to the
8 practice at the OIO that the investigation was
9 closed?

10 A. If there was a closing memo?

11 Q. Yes.

12 A. Yeah. I don't remember that it was
13 closed. Well, it was closed to my recollection,
14 but that would have been the final thing, if you
15 ask me. Maybe it was resurrected later after I
16 left. I don't know.

17 Q. What was your recollection about it being
18 closed?

19 A. My recollection is that I was at the firm
20 belief that this was a management issue to be
21 settled by management and not appropriate for OIO

1 investigation.

2 Q. And it is your recollection that, at the
3 time you made that conclusion, that the case was
4 then closed?

5 A. I'm not sure that was the reason it was
6 closed. Yeah, you're right. I don't remember
7 specifically but I would have tried to close it, I
8 believe.

9 Q. Do you have any specific recollection of a
10 meeting with Dr. Gandhi on April 17th, 2008?

11 A. There's no way I could remember a specific
12 meeting on that day and I don't see it in his
13 calendar. It's not included, so I just don't
14 know.

15 Q. But you have no specific recollection?

16 A. No, I don't.

17 Q. Do you have a specific recollection of any
18 contact, through meeting, e-mail, phone or
19 otherwise, with Eric Payne on April 10th, 2008?

20 A. I have recollections of meeting with Eric
21 Payne on several occasions, but I couldn't give

1 you an exact date.

2 Q. So you have recollections of meeting with
3 Eric Payne, but you have no specific recollection
4 as of April 10, 2008?

5 A. To that date, no. I don't deny it. If
6 you have information that I did, I would not deny
7 it.

8 Q. Do you recall a meeting with Eric Payne on
9 June 12th, 2008?

10 A. My answer would be the same.

11 Q. Do you ever recall telling Eric Payne that
12 any of the investigations that Mr. Payne initiated
13 had been reported to Dr. Gandhi?

14 A. I don't have a specific recollection of
15 it. I don't know why I would tell him that. But
16 if I did report it to Dr. Gandhi, I wouldn't
17 necessarily say it came from Eric Payne. I would
18 just say this is something we've learned and we're
19 investigating it.

20 Q. So you have no specific recollection of
21 telling Eric Payne that you reported any of his

1 complaints to Dr. Gandhi?

2 A. No, but there's a very strong likelihood
3 that I would have, because my job was to keep
4 Gandhi informed of problems and -- but whether I
5 would say, in making such a report, that it came
6 from Eric Payne, I doubt it.

7 Q. So you believe there was a strong
8 likelihood that you would have reported Eric
9 Payne's complaint to Dr. Gandhi, but you don't
10 believe you would have revealed his identity?

11 A. That's my general practice. I don't have
12 a specific recollection of it. I don't even have
13 a recollection of reporting it to Gandhi, but what
14 I would do routinely is just brief him on some of
15 the important things we were doing and just tell
16 him and, if he was interested, I would give him
17 more detail or, otherwise, I would just go over
18 it. He was most interested in our audits, because
19 they revealed weaknesses in the system and,
20 generally, he wasn't that interested in
21 investigations unless it showed a systematic

1 weakness, such as something which allowed someone
2 to embezzle money and steal money.

3 Q. As to the other half of my initial
4 question, do you have any specific recollection of
5 telling Eric Payne about any of your reports to
6 Gandhi in whatever fashion?

7 A. No specific recollection there.

8 Q. Do you have a general recollection?

9 A. Of telling Eric that I reported something
10 to Dr. Gandhi?

11 Q. Yes.

12 A. No, I don't have a specific recollection.

13 Q. The question is: Do you have a general
14 recollection?

15 A. I thought I saw something in the e-mails
16 about that.

17 Q. Can you indicate where?

18 A. I'm looking. Well, on Friday May 23rd, I
19 sent -- no, this is from Eric Payne. But it says,
20 I'd like to discuss this e-mail, the recent report
21 from OIO to Dr. Gandhi about procurement and how

1 IM Office can work with OIO and et cetera; that
2 indicates that he was aware of a report from OIO
3 to Dr. Gandhi.

4 Q. And that was on May 23rd, 2008?

5 A. Right.

6 Q. Not on June 12th?

7 A. Oh, that's what you were specifically
8 interested in? I thought you asked about a
9 general recollection.

10 Q. Other than that e-mail -- I'll let you
11 review the rest of the e-mails.

12 A. I don't see it.

13 Q. So other than that e-mail, you don't have
14 any recollection of telling Eric Payne about
15 reporting any of his complaints to Dr. Gandhi?

16 A. No, I don't.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[illegible]

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14 MR. PARSONS: I believe I could turn it
15 over to you. I would like to ask, on the record,
16 if, when you prepare this, you could mark the
17 entire deposition as confidential. I understand
18 that there are some parts that are not, but I
19 think the best way to go about it is to mark it
20 all confidential and then counsel could look at
21 certain parts and designate those parts that are

1 not confidential and then get a revision.

2 MR. TEMPLE: I certainly am going to
3 object to that. I clearly delineated my
4 questioning to ensure that the first part of this
5 deposition is not confidential, so I don't think,
6 that until we look at it, that we have to make any
7 designation. The final deposition will reflect
8 that.

9 MR. PARSONS: I agree that you delineated
10 and certain parts were not confidential and I'll
11 agree to those parts when we determine what they
12 are, they will not be confidential. I'm just
13 concerned because, after we made the standing
14 agreement, we went in and out of the various
15 confidential topics throughout the course of the
16 deposition and I want to make sure that nothing
17 gets out that is in fact confidential. So I'd
18 ask, as a preliminary matter, that we mark it
19 confidential and you can call me at any time and
20 we can talk about what's not confidential and get
21 it appropriately marked.

1 MR. TEMPLE: I just don't think it's
2 necessary at this time. It's not going to be
3 going anywhere. It's not a final deposition. So
4 I mean, we're going to object to that. When we
5 have a final deposition, we can have an
6 appropriate discussion.

7 MR. PARSONS: We can discuss this further,
8 I suppose, at a later date, but go ahead and ask
9 your final questions so that we can let Mr. Andary
10 go.

11 MR. TEMPLE: I just have one final
12 question.

13 FURTHER EXAMINATION BY COUNSEL FOR THE PLAINTIFF
14 BY MR. TEMPLE:

█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]

[illegible]

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9 FURTHER EXAMINATION BY COUNSEL FOR THE DEFENDANTS

10 BY MR. PARSONS:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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MR. PARSONS: Nothing further.

(The deposition concluded at 5:14 p.m.)